



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/149658

PRELIMINARY RECITALS

Pursuant to a petition filed May 28, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on July 17, 2013, at Milwaukee, Wisconsin.

The record was held open to give Petitioner an opportunity to submit documentation of a change in payroll agencies, bank records and pay stubs. The Department of Children and Families (DCF) was allowed a response and submitted a State Wage Record print out and a Request for Adjustment to the Public Assistance Collections Unit (PACU).

The following Exhibits have been added to the record:

P3 – Chase Bank statement for November 15, 2012 to December 13, 2012
P4 – Chase Bank statement from December 14, 2012 to January 14, 2013
P5 – Chase Bank statement from February 14, 2013 to March 13, 2013
P6 – Letter dated July 18, 2013 from Miguel Iribarren
P7 – Paystubs 12/23/12 to 3/2/2013
P8 – Time Sheets 12/23/12 to 2/17/13

R13 – State Wage Record printed 7/24/2013
R14 – Request for Adjustment dated 7/30/2013

The issue for determination is whether the agency correctly determined that Petitioner was overpaid child care benefits in the amount of \$8239.38 for the period of 08/19/2012 to 02/28/2013.

NOTE: Petitioner has a pending appeal in case [REDACTED] regarding whether Petitioner committed an intentional program violation that caused the subject overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Attorney Joseph McCleer

Milwaukee Early Care Administration – MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 30, 2013, DCF sent Petitioner a Child Care Client Overpayment Notice, Claim Number [REDACTED], indicating he was over paid child care benefits in the amount of \$9316.38 for the period of 08/19/2012 to 02/28/2013 and that the cause of the overpayment was an intentional program violation. (Respondent Exhibit 2)
3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 28, 2013. (Petitioner Exhibit 1)
4. On July 30, 2013, the agency amended its Child Care Client Overpayment Notice, Claim Number [REDACTED], by removing the overpayment for January 2013 and reducing the overpayment amount to \$8239.38. (Respondent's Exhibit 14)
5. Petitioner's assistance group size is 3. (Respondent Exhibit 2)

DISCUSSION

I. JURISDICTION

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. *Wisconsin Share Child Care Assistance Manual*, §2.1.5.3 See also, Wis. Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

II. A RECIPIENT MUST REPAY A CC OVERPAYMENT IF EITHER THE RECIPIENT OR THE AGENCY WAS AT FAULT IN CREATING THE OVERPAYMENT.

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Wisconsin Shares Child Care Assistance Manual*, §2.1.4.2. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

III. PARTICIPATION IN AN APPROVED ACTIVITY

In order to be eligible for childcare benefits, the applicant must need childcare to participate in an approved activity. Wis. Stat. §49.155(1m)(a); Wis. Admin. Code §DCF 201.04(2g)(d); *Wisconsin Child Care Assistance Manual* §1.4.8

At the hearing, the agency contended that Petitioner was not working and was therefore, not engaging in an approved activity in January and February 2013. However, Petitioner has produced bank statements, time sheets and pay stubs showing that he was, in fact, employed full time during January and February 2013. (See Petitioner Exhibits 3-5, 7 and 8) In a Request of Adjustment submitted to PACU, DCF conceded that Petitioner was, in fact, participating in an approved activity during the time in question. (Respondent's Exhibit 14) Accordingly, it is found that the agency erred in its initial determination that the alleged overpayment for January and February 2013 was caused by a failure to participate in an approved activity.

IV. INCOME LIMITS

Petitioner did not dispute the fact that he used child care benefits in the amounts stated by DCF. However, Petitioner disagreed with the agency's determination of his income.

In order for initial applicants to be eligible for Child Care benefits, household income must be below 185% of the Federal Poverty Limit (FPL). *Wisconsin Child Care Assistance Manual* §1.6.2 For on-going eligibility, income cannot exceed 200% FPL. *Wisconsin Child Care Assistance Manual* §1.6.3 Income is evaluated on the basis of gross monthly income. *Id.* at §1.6.4

This case concerns on-going benefits. (Respondent's Exhibit 8) As such, in order for Petitioner to be eligible for benefits during the period of August 19, 2012 through February 28, 2013, his income needed to be at or below 200% FPL, which for an assistance group size of 3 is \$3255.00 per month. See <http://www.dhs.wisconsin.gov/badgercareplus/fpl.htm>

Petitioner did not contest the accuracy of the wage information contained in Respondent's Exhibit 5, which included a print out from the Work Number website. (See Exhibit 5) Based upon that information we have the following gross monthly income for August 2012 through December 2012:

August - \$4132.50 (\$1908.74 + \$2223.75)
 September - \$3431.25 (\$1458.75 + \$1972.50 + \$1616.25)
 October - \$4290 (\$1965.00 + \$2325.00)
 November - \$5850 (\$1676.25 + \$1848.75)
 December - \$4147.50 (\$1571.25 + \$2576.25)

Thus, Petitioner was over the income limit of \$3255.00 between August 2012 and December 2012. This is true, even if income is averaged, because averaging Petitioner's income over those five months results in monthly income of \$4370.25. ($\$4132.50 + \$3431.25 + \$4290 + \$5850 + \$4147.50 = \$21,851.25 \div 5 = \4370.25)

Per Petitioner's pay stubs (exhibit 7) his gross monthly income for January and February 2013 works out to be:

January - \$2752.50 (\$1552.50 + \$1200)
 February - \$4402.50 (\$2302.50 + \$2100)

Thus, Petitioner was within the program limit of \$3255 in January 2013, but not in February 2013.

CONCLUSIONS OF LAW

Upon amending claim number [REDACTED], the agency correctly determined Petitioner was overpaid childcare benefits, in the amount of \$8239.38, between August 19, 2012 and December 31, 2012 and between February 1, 2013 and February 28, 2013, because his income went over program limits.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

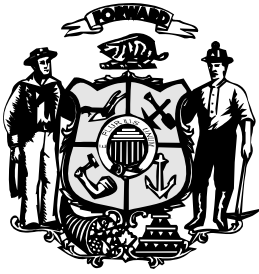
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of August, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 19, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud
joseph.mccleer@wisconsin.gov